IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5953 OF 2005
IN
CRIMINAL APPLICATION NO.5952 OF 2005

The State of Maharashtra ...Applicant
vs.
Shivaji Vithal Phadtare ...Respondent

Mr.S.R.Shinde, A.P.P.for the Applicant
Mr.M.S.Mohite for the Respondent.

CORAM: A.S.OKA,J.
DATE : DECEMBER 13,2006.

P.C.:

1. Heard learned A.P.P. for the Applicant-State. The Application is strongly opposed by Shri Mohite appearing for the Respondent.

2. The order of acquittal was passed on 29th October 2004. The application for certified copy was made on 30th October 2004. The certified copy was ready on 6th December 2004 and was delivered on 8th December 2004. The concerned Public Prosecutor, Satara forwarded his opinion to the Law and Judiciary Department on 13th January 2005. On 23rd February 2005, the Government passed a resolution authorising the Public Prosecutor to prefer an Appeal which was received by the office of the Public Prosecutor on 25th February 2005.

3. Shri Mohite for the Respondent pointed out to me the Affidavit filed by the concerned Additional Public Prosecutor in which he has stated that he received the papers for drafting the application for leave on 11th March 2005 and after completing the drafting, he returned the papers on 7th

April 2005 along with application for leave to prefer an Appeal and condonation of delay. He pointed out that the Application was filed on 8th September 2005 and there is no explanation for delay from 7th April 2005 till 8th September 2005.

4. My attention has been invited to the Affidavit of Shri U.K.Surwade, Superintendent in the office of the Public Prosecutor. In paragraph 4 he has stated that the concerned Additional Public Prosecutor gave the application for leave for filing on 31st August 2005. The learned A.P.P. has produced for my perusal docket of the concerned matter which records an endorsement that papers were received on 31st August 2005. Shri Mohite for the Respondent submits that the said statement is totally contrary to what is stated by the Additional Public Prosecutor in his Affidavit.

5. There is some support for the said statement of the Superintendent in the form of endorsement made on the docket. It is also stated in the Affidavit of Superintendent that the concerned Additional Public Prosecutor was removed from his post.

6.In my view, there is sufficient explanation for delay. Rule is made absolute in terms of prayer clause (a). Place the Application No.5952 of 2005 for admission on 25th January 2007. In the meanwhile, office will call for Record and

Proceedings.

JUDGE